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# ATTACHMENT 1

Staff Proposal for Broadband Loan Loss Reserve Fund Program Guidelines

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## 1. Background and Purpose

Pursuant to the September 16, 2021 Amended Scoping Memo in the Order Instituting Rulemaking Regarding Revisions to the California Advanced Services Fund (R.20-08-021), this California Public Utilities Commission (CPUC) staff proposal includes guidelines for comment and identifies implementation details for the administration of the Broadband Loan Loss Reserve Fund (Loan Loss Program), accordant with SB 156<sup>1</sup> and the Budget Act of 2021 (AB 164).<sup>2</sup>

SB 156 created the Loan Loss Program to fund costs related to financing broadband infrastructure deployment by a local government agency or nonprofit organization, including payment of costs of debt issuance, obtaining credit enhancement, and establishment and funding of reserves for the payment of principal and interest on the debt.

Additionally, SB 156 authorizes the following:

- Permits the CPUC to establish, among other things, eligibility requirements, financing terms and conditions, and allocation criteria, for infrastructure projects deployed using financing supported in whole or in part by funds.
- Allows the CPUC to require a local government agency or nonprofit organization to provide information demonstrating the agency's or nonprofit organization's ability to reasonably finance and implement the infrastructure project deployed using financing supported in whole or in part by funds allocated pursuant to this section.
- Requires biannual progress reports identifying project milestones and percent completions to date and a completion report, including a full description of the completed project, comparison of approved versus actual costs of construction, and speed test data for all areas served by the project.

## 2. Authority

Authority for the Loan Loss Program is attributed to SB 156 (Chapter 112, Statutes of 2021) Section 8, which added Public Utilities Code section 281.2, and AB 164 (Chapter 84, Statutes of 2021) Section 34, Item 8860-062-0001.

## 3. Definitions

For purposes of the Loan Loss Program, the following definitions apply:

“Bond Indenture” – A “contract that sets forth the promises of a bond issuer [made to a trustee] and [establishes] the rights of investors.”<sup>3</sup>

“Conduit Issuer” – An organization, usually a government agency, that issues municipal securities to raise capital for revenue-generating projects where the funds generated [from the bond sale] are used

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<sup>1</sup> Senate Bill 156 (Chapter 112, Statutes of 2021) section 8, added Public Utilities Code Section 281.2.

<sup>2</sup> Assembly Bill 164 (Chapter 84, Statutes of 2021) section 34, Item 8860-062-0001.

<sup>3</sup> Bond indenture, The Free Dictionary, Farlex (Aug. 26, 2022, 1:30 PM), <https://financial-dictionary.thefreedictionary.com/bond+indenture#:~:text=An%20indenture%20sets%20the%20terms%20of%20the%20bond%3B,Indentures%20are%20usually%20summarized%20in%20a%20bond%27s%20prospectus.>

by a third-party (known as the “conduit borrower”) [for] some project or activity that has a public benefit [and where the funds are repaid by the conduit borrower from specified revenues].<sup>4</sup>

“Depository” – A Depository refers to a place or entity that holds financial securities in a dematerialized form. A bank, organization, or any institution holding and assisting in security trading is referred to as a depository. Depository accounts hold securities in the same way that bank accounts hold funds. A depository functions as a connection between the public companies that issue financial securities and the investors or shareholders.<sup>5</sup>

“Deployment Schedule” – consists of all necessary schedules to complete a broadband project, including a schedule for obtaining necessary permits prior to construction. The schedule must include the timeline required for the California Environmental Quality Act (CEQA) review, as applicable. Also, a deployment schedule must include a schedule for project construction following receipt of permits, to complete the project within 24 months, or within 18 months if the project is categorically exempt from CEQA.

“Eligible Project” – A broadband network construction project that, when complete, will be capable of offering wireline broadband service to last mile connections at or above 100 Megabits per second (Mbps) downstream and 100 Mbps upstream, or 100 Mbps downstream and 20 Mbps upstream if symmetrical service is not practicable. Hereinafter “100/100 Mbps” and “100/20 Mbps.”

“Event of Loss” – shall be tied to the definition of Monetary Default by the borrower and, should event of loss occur, it will require the trustee to provide the borrower with an acceleration notice demanding all payments due, per the arrangement of the Loan Loss Agreement. After a series of days, the trustee would disburse funds from the Loan Loss Program accounts to cover the appropriate share of defaulted amount in the event of loss.

“Escrow and Reserve Accounts” – The CPUC may hold the fund balance in an escrow account with a financial institution partner or other fiduciary, after which, subsets of the funds are moved in the appropriate proportion as stated in the Loan Loss Agreement into a reserve fund, as loan or bond protections are awarded.<sup>6</sup>

“Fund Balance” – The total amount of funds remaining in the Loan Loss Fund (currently \$750 million) available to provide cost coverage as defined in Section 6.2 Loan Loss Program Cost Coverage.

“Guarantor” – A financial term describing an individual who promises to pay a borrower's debt in the event that the borrower defaults on their loan obligation.<sup>7</sup>

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<sup>4</sup> The Investopedia Team, Conduit Issuer, Investopedia (Aug. 15, 2022, 11:16 AM), <https://www.investopedia.com/terms/c/conduit-issuer.asp>.

<sup>5</sup> CFI Team, Depository, Corporate Finance Institute (Aug. 15, 2022, 1:24 PM), <https://corporatefinanceinstitute.com/resources/knowledge/finance/depository/>.

<sup>6</sup> State and Local Solution Center, Key Terms Used in Loan Loss Reserve Fund Agreements, Department of Energy (Aug. 15, 2022, 1:21 PM), <https://www.energy.gov/eere/slsc/key-terms-used-loan-loss-reserve-fund-agreements>.

<sup>7</sup> Andrew Bloomenthal, Guarantor, Investopedia (Aug. 15, 2022, 1:18 PM), <https://www.investopedia.com/terms/g/guarantor.asp>.

“Loan Loss Agreement” – A document that articulates procedures and party responsibilities in the event of Monetary or Non-Monetary Default including what amount of loan loss coverage will be provided in the event of Monetary Default.

“Monetary Default” - The failure to make required interest or principal repayments on a debt, whether that debt is a loan or a security.<sup>8</sup>

“Municipal Bonds” – A bond issued by a local government agency or other eligible entity to raise capital by borrowing money from investors to meet financial obligations, or to fund projects that benefit their jurisdiction. As with other bonds, it involves a promise to return the principal and pay interest on specified dates, but the interest payment may be exempt from federal income taxes. There are many types of municipal bonds, but the two types most pertinent to public finance are revenue bonds and general obligation (GO) bonds.

“Project Budget” – The total projected costs required to complete a project over a defined period of time.

“Program Budget” - The total amount of available funds to be utilized for credit enhancement and administrative expenses.

“Revenue Bonds” – Revenue bonds finance projects such as hospitals, airports, toll roads, education facilities and bridges. Generally, revenues from those projects repay the interest and principal of the issued bonds over time. For example, a bridge financed by revenue bonds has a toll paid by motorists each time they cross the bridge. Revenues from the toll are used to pay back investors who purchased the bonds used to finance construction of the bridge. These do not require voter approval.<sup>9</sup>

“Sovereign Tribal Government” – A Native American tribe located in California that is on the contact list maintained by the Native American Heritage Commission for the purposes of Chapter 905 of the Statutes of 2004, (see Cal. Pub. Res. Code § 21073). Also includes wholly-owned tribal corporations, tribal nonprofits, and tribal utility companies with proof of authorization to apply by the Tribe’s Council or other governing body.

“Trustee” – A financial institution that is granted trust powers, such as a commercial bank or trust company. This entity, in turn, has a fiduciary duty to the bond issuer to enforce the terms of a Loan Loss Agreement. A trustee sees that bond interest payments and principal repayments are made as scheduled and protects the interests of the bondholders if the issuer defaults.<sup>10</sup>

“Underwriter” – Any party that evaluates and assumes another party's risk for payment, which often takes the form of a commission, premium, spread, or interest. Underwriters determine the level of the

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<sup>8</sup> James Chen, Default, Investopedia (Aug. 15, 2022, 1:12 PM), <https://www.investopedia.com/terms/d/default2.asp>.

<sup>9</sup> John Chang, California Bonds 101: A Citizens Guide to State Revenue Bonds, California State Treasurer (Aug. 15 2022, 4:24 PM), [https://www.treasurer.ca.gov/publications/bonds101\\_revenue.pdf](https://www.treasurer.ca.gov/publications/bonds101_revenue.pdf).

<sup>10</sup> James Chen, Bond Trustee, Investopedia (Aug. 15, 2022, 10:53 AM), <https://www.investopedia.com/terms/b/bond-trustee.asp#:~:text=A%20bond%20trustee%20is%20a%20financial%20institution%20that,to%20enforce%20the%20terms%20of%20a%20bond%20indenture>.

risk for lenders. Underwriters purchase debt securities—such as government bonds, corporate bonds, municipal bonds, or preferred stock—from the issuing body (usually a company or government agency) to resell them for a profit. This profit is known as the "underwriting spread."<sup>11</sup>

“Unserved area” – An area for which no wireline broadband provider reliably offers broadband service at speeds of at least 25 Mbps downstream and 3 Mbps upstream to the entire community.

## 4. Responsible Entities

The following entities and their roles and responsibilities have been identified for implementing the Loan Loss Program.<sup>12</sup>

- California Public Utilities Commission (CPUC)
  - Roles and Responsibilities: Applicant evaluator (eligibility, operational/technical fitness), administrator of the Loan Loss Program.
- Financing Contractor<sup>13</sup>
  - Roles and Responsibilities: Advisor (eligibility, bond/financial fitness), Guarantor, Conduit Bond Issuer and Loan Loss Program design partner.
- Trustee, Registrar or Paying Agent<sup>14</sup>
  - Roles and Responsibilities: Fiduciary, manages escrow account and reserve account, ensures the enforcement of a bond indenture and ensures that bond interest and principal payments are made as scheduled. Protects the interests of the bond holder in the event of default by the issuer.
- Local Government Agency / Non-Profit
  - Roles and Responsibilities: Borrower.
- Lender
  - Roles and Responsibilities: Individual or institution that makes funds available to the borrower
- Underwriter
  - Roles and Responsibilities: Underwrite debt issuance.
- Beneficial Owner
  - Roles and Responsibilities: Owner or purchaser of the debt security issued by the local government agency / non-profit.
- Bond Counsel
  - Roles and Responsibilities: Counsel to the Borrower.
- Municipal Advisor
  - Roles and Responsibilities: Advisor to the Borrower.

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<sup>11</sup> Caroline Banton, Underwriter, Investopedia (Aug. 15, 2022, 3:39 PM), <https://www.investopedia.com/terms/u/underwriter.asp>.

<sup>12</sup> See Section 3 Definitions for a description of each of the responsible entities.

<sup>13</sup> Roles and responsibilities of the Financing Contractor may be further refined in a future agreement between the CPUC and the Financing Contractor.

<sup>14</sup> To be determined by the CPUC and its Financing Contractor.

## 5. Eligible Entities

Entities eligible to participate in the Loan Loss Program are nonprofit organizations or local government agencies as defined in Government Code section 53167(e) including:

- a city
- a county, including a county service area
- a community service district
- a public utility district
- a municipal utility district
- a joint powers authority
- a local educational agency, as defined by Education Code section 47640
- a sovereign tribal government, as defined above
- an electrical cooperative as defined by Public Utilities Code section 2776

## 6. Supported Financing Instruments

This section describes the financing tools that will be available to applicants accepted into the Loan Loss Program. The program will support a variety of potential credit enhancements for local government agencies and non-profits. If the debt is issued for the purpose of the development of broadband infrastructure, the applicant demonstrates sufficient expertise in deployment, and the proposed project is evaluated as feasible, the Loan Loss Program may support all or parts of the project's finances.

### 6.1. Credit Enhancement

Credit enhancements offered in the Loan Loss Program are designed to induce private lending and reduce the cost of financing by reducing the lender's risk in the transaction. The Loan Loss Program will require a separate financing agreement from a private lender; the CPUC will not act as a direct lender. Credit enhancements function as a credit support, with the credit impact going primarily to the borrower by way of reduced costs to their financing structure or providing the borrower with an ability to obtain financing they would not have otherwise without a credit enhancement. If the borrower defaults beyond the limit of the guarantee, the Loan Loss Program will not cover the extra costs.

#### 6.1.1. Loan Loss Reserve

Loan Loss Reserves are a credit enhancement approach commonly used by state and local governments to provide partial risk coverage to lenders—meaning that the reserve will cover a prespecified amount of loan losses.<sup>15</sup> The Loan Loss Reserve will only cover costs associated with the principal.

#### 6.1.2. Debt Service Reserve Fund

A debt service reserve fund is a fund to pay for debt service if revenues are insufficient to satisfy debt service requirements in a given year of the issued bond. Debt service reserve funds are typically used for the final year of debt service payments and may reduce the overall bond issuance needs of a local agency or non-profit organization.

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<sup>15</sup> State and Local Solution Center, Loan Loss Reserve Funds and Other Credit Enhancements, Department of Energy (Aug. 15, 2022, 4:22 PM), <https://www.energy.gov/eere/slsc/loan-loss-reserve-funds-and-other-credit-enhancements>.

### 6.1.3. Proportion of Interest and/or Principal Coverage

The Loan Loss Program Loan Loss Reserve will include principal coverage that is between five and twenty percent of the total amount of the project loan amount, dependent on perceived risk of application review.

The Loan Loss Program Debt Service Reserve Fund will cover costs associated with payment of principal and interest on debt that does not exceed twenty percent of the total debt amount. Further, the Debt Service Reserve Fund will cover the costs as long as they do not exceed the anticipated total of two years' of debt service payments.

## 6.2. Loan Loss Program Cost Coverage

Costs associated with the issuance of debt for the development of broadband infrastructure are considered "eligible" project costs under Public Utilities Code Section 281.2. These include costs related, but not limited, to:

- Payment of costs of debt issuance, not to exceed five percent of the total debt issued
- Obtaining credit enhancement; costs may include transaction costs (bond counsel fees) and cost of the guarantor to issue.

## 7. Loan Loss Program Guidelines

### 7.1. Loan Loss Fund Location

The Loan Loss Fund Balance will be held in an escrow account with a financial institution partner or fiduciary acting as a trustee for the bond issuer. Funds will be moved from the escrow account into a reserve account as awards are made and earmarked to cover credit enhancements. As bonds reach maturity, funds will be released back to an account controlled by the CPUC to be re-used as credit enhancements for future applicants.

### 7.2. Loan Loss Fund Disbursement

Rules for disbursement of the earmarked funds in the event of default on the part of the borrower will be defined by the loan loss agreement among the bond issuer, trustee and the CPUC. The loan loss agreement specifies the process for the disbursement and transfer of a specified amount of capital to the lender in the event the lender has exhausted all remedies with the borrower and the borrower has defaulted on their loan and is unwilling to pay the lender.

### 7.3. Loan Loss Program Earned Interest

Interest earnings in either the escrow or reserve accounts will be returned to the Fund Balance, and will be used to expand fund capacity, or replace funds spent to cover loan losses or other support outlays, as determined by the CPUC.

### 7.4. Loan Loss Program and Multiple Bond Issuances

The Loan Loss Program will permit funds to be reserved for multiple bond issuances i.e. successful applicants are able to reserve repeat funds, to support new credit enhancements. Applicants are required to submit a new application when they plan to issue new bonds. Funds will be awarded on a

per-application and per-project basis, and will require a new application for each reservation as to Loan Loss funds at this time.

#### 7.5. Loan Loss Program Funding Allocation Timing

Applicants have the ability to encumber funds in the Loan Loss Program up to 30 years. Shorter times are preferable so that funding can be released, returned to the fund, and redistributed to support other projects.

#### 7.6. Matching Funds Not Required

The Loan Loss Program will not require local government agencies or non-profits to provide matching funds in their applications.

### 8. Applicant Eligibility Criteria

Applicant eligibility for local governments (including tribal governments as defined herein), and non-profits and project details will be reviewed in Part I of the submission guidelines. For more information on the CPUC and Financing Contractor's two-part application review process, refer to Section 10.2 Process for Application Review and Participation in the Loan Loss Program.

#### 8.1. Applicant Financial Ability

Applicants shall demonstrate financial qualifications by providing information consistent with the following guidelines:

- Applicant must provide the following information:<sup>16</sup>
  - Certified Public Accountant-audited financial statements for the last three years, providing the borrower's
    - Balance Sheet
    - Income Statement
    - Statement of Cash Flows
  - Pro forma five-year financial forecast
    - Balance Sheet
    - Income Statement
    - Statement of Cash Flows
  - Schedule of all outstanding and planned debt
  - Collateral documentation
- Applicant must describe whether applicant has or will pursue additional sources of outside funding.
  - Indicate status of sources and uses of funding
- Project Budget and Timeline
- A binding term sheet that outlines the proposed financing deal (for an issuance that is underway but not yet complete).

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<sup>16</sup> See requirements for demonstration of financial fitness used for the Broadband Revolving Loan Account, Decision 12-02-015, Implementing Broadband Grant and Revolving Loan Accounts, Aug. 16, 2022 9:26 AM, [https://docs.cpuc.ca.gov/PUBLISHED/FINAL\\_DECISION/159265-05.htm](https://docs.cpuc.ca.gov/PUBLISHED/FINAL_DECISION/159265-05.htm).

## 8.2. Applicant Management Experience

Applicants shall document project management experience with the following disclosures:

- Provide documentation of applicant's administrative capability, including the management team structure. Identify staff or entities responsible for project design and construction, marketing and technical support, and maintenance and operation.
- Provide documentation (e.g., a signed letter or contract) of in-house or contracted expertise for evaluating and deploying broadband infrastructure.
- Provide documentation of expertise in bond financing and financial administration, or contracts with consultants or advisory entities (e.g., underwriters, financial advisors, bond counsel, etc.) necessary for successful bond issuance or encumbrance of other forms of debt for project deployment.
- Provide documentation of expertise in debt management (administrative capacity, debt ratio coverage, past performance)

## 9. Application Information

Staff provides the following guidelines for Project and Financing Details to be submitted when applying for a credit enhancement in the Loan Loss Program. As referenced in Section 10.2 Application Review and Participation in the Loan Loss Program, Project Details will be reviewed as Part I of the application submission and Financing Details will be reviewed in Part II.

### 9.1. Project Service Standards

Eligible broadband projects under the Loan Loss Program should be designed to reliably offer, upon completion, symmetrical speeds at or above 100 Mbps download and upload. In some cases, 100 Mbps symmetrical speeds may be impracticable and minimum speeds of 100 Mbps download and 20 Mbps upload may be considered.

Additionally, staff recommends extending the requirements for low-cost broadband plans as defined in the Federal Funding Account Program, participation in the Affordable Connectivity Program (ACP) or a successor program as identified by the Commission, and open access middle-mile infrastructure requirements.

### 9.2. Project Details

- Entity
  - Current operations and expertise
    - Description of the applicant's current broadband infrastructure and existing infrastructure in the area
- Proposed Project Summary
  - Describes the project and how the proceeds from the debt financing will be utilized to fund its development
- Proposed Project Data
  - Customer concentration
  - Project location data
  - Median household income
  - Digital equity factors

- Broadband need, including unserved and underserved status
- Deployment Schedule
- Revenue and Expense Details
  - Pricing commitment, affordability, Affordable Connectivity Program (ACP) offerings
  - Marketing / outreach plan
  - Provision of voice service
  - Revenue model
- Other Project Information
  - Economic life of all assets to be funded
  - Permitting, including California Environmental Quality Act (CEQA)
- Government, Tribal, and Community Support
- Proposed Funding Sources
  - Include other California or Federal broadband programs

### 9.3. Financing Details

- Financing (Bond) Details
  - Uses of proceeds
  - Security
  - Bond length and maturity date
  - Outstanding parity bonds; additional bonds
    - Bonds issued under the same indenture or agreement
  - Other outstanding debt
    - Bonds issued under separate indentures or agreements by the applicant
  - Proposed debt service reserve for bonds
    - An account that holds the maximum annual debt service for the bond issuance stated in the application.
  - Redemption provisions
  - Debt service schedule for financing, security, and sources of payment
  - Flow of Funds
- Legal Matters
  - Material litigation, if any
  - Legal team
    - A breakdown of counsel titles and responsibilities to parties on legal matters pertaining to the implementation of the bond issuance.
- Expected Bond Rating, if any
- Municipal Advisor, if any
- Underwriting Team

### 9.4. Prioritization Criteria

If funds in the Loan Loss Program become encumbered greater than 80 percent (\$600 million) of the original Program Budget or if funding remaining in the Fund Balance drops below 70 percent (\$225 million) of the original funding amount, project prioritization will be considered for communities identified in the CPUC ESJ Action Plan or unserved territories as defined in the Federal Funding Account

Program Rules and Guidelines. Additionally, project applications proposing to serve these communities will be assessed on scoring criteria provided below in addition to the criteria, project service standards, project details, and financing details stated in Section 9 Application Information. Should Program Budget encumbrances exceed \$600 million or should the Escrow Account fund balance dip below \$225 million, application review will change from a rolling basis to a quarterly review with application deadlines to be provided by staff.

Staff will review groups of applications based on quarterly application deadlines and award funding requested to applications that receive the highest scores until Loan Loss funding is exhausted.

Groups for project prioritization once 80 percent of fund is encumbered or funding remaining in the Fund Balance drops below 70 percent:

- Projects with secure financing and relatively low risk
- Environmental and Social Justice (ESJ) communities identified in the CPUC's ESJ Action Plan<sup>17</sup>:
  - Disadvantaged communities, defined as census tracts that score in the top 25% of CalEnviroscreen, along with communities that score within the top 5% of CalEnviroscreen's Pollution Burden but do not receive an overall CalEnviroscreen score
  - All Tribal lands
  - Low-income households (households below 80% of the area median income)
  - Low-income census tracts (Census tracts where aggregated household incomes are less than 80 percent of area or state median income)
- Unserved territories<sup>18</sup>

Criteria for project prioritization in the Loan Loss Program once 80 percent of fund is encumbered or funding remaining in the Fund Balance drops below 70 percent:

- Project Technology Choice (up to 10 points). An application proposing to invest in fiber optic infrastructure will receive priority. Fiber optic infrastructure is scalable and enables the next generation of application solutions for all communities.
- Offers Affordability Program (up to 10 points). An application that participates in the Affordable Connectivity Program (ACP) or provides access to a broad-based low-income affordability program in the proposed service area that provides benefits to households commensurate to the ACP. Should the ACP end, the CPUC will identify a successor low-income subsidy program
- Existing Broadband Service Need (up to 20 points). An application proposing to serve areas unserved by a wireline provider that reliably offers 25 Mbps download and 3 Mbps upload service as identified by the Communications Division.

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<sup>17</sup> Environmental & Social Justice Action Plan, Aug. 25, 2022, <https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/news-and-outreach/documents/news-office/key-issues/esj/esj-action-plan-v2jw.pdf>.

<sup>18</sup> As defined in the Federal Funding Account Program Rules and Guidelines – An “unserved” area means an area for which no wireline broadband provider reliably offers broadband service at speeds of at least 25 Mbps downstream and 3 Mbps upstream to the entire community.

- Leveraging Statewide Middle Mile (up to 10 points). An application that proposes to leverage the statewide open-access middle mile network will receive priority, unless not in reasonable proximity to the network.

## 10. Implementation

### 10.1. Submission Requirements and Timelines

At minimum, an application should demonstrate the financial, technical, and operational capacity to execute the project successfully and completely in the timeframe established. Further, the application should demonstrate a well-planned project with a reasonable budget that shows it will deliver speeds and service proposed and be sufficiently robust to meet increasing demand for bandwidth.

To be considered for the Loan Loss Program, applicants must submit a completed Communications Division staff-provided application form, required supporting documents and attestation to [Broadband.LoanLoss@cpuc.ca.gov](mailto:Broadband.LoanLoss@cpuc.ca.gov).

Staff will post a list of all pending applications, deadlines, and notices to the CPUC Broadband Loan Loss Program webpage.<sup>19</sup> Completed applications will be posted to the CPUC Broadband Loan Loss Program webpage by Communications Division staff along with a map of where the proposed project is scheduled to be developed.

Applicants that submit incomplete applications to the Loan Loss Program will be contacted by staff in order to correct application deficiencies. If deficiencies cannot be remedied, applicants will be rejected from the applicant pool and must re-apply.

Applications may be submitted at any time, and staff will target to review them in no more than 1-2 months with its Financing Contractor. If at anytime the Loan Loss Fund encumbers 80 percent of its original funding amount (\$600 million) or the Fund Balance drops below 70 percent of original funding allocation (\$225 Million), staff will transition from accepting applications on a rolling basis and begin to consider applications submitted quarterly and prioritize funding based on criteria specified in Section 9.4 Prioritization Criteria until funding is exhausted. If the last day of the calendar month falls on a weekend or state holiday, the monthly application period will be extended to the close of the next business day. Staff shall notify an applicant by letter or email specifying reasons for rejection/denial should an application fail to meet the Loan Loss Program eligibility criteria.

### 10.2. Application Review and Participation in the Loan Loss Program

Eligible entities interested in participating in the Loan Loss Program shall submit required project and financing application materials as specified in Section 9.2 Project Details and 9.3 Financing Details.

Application submissions will be reviewed in a two-part process by Communications Division staff for technical/operational fitness (Part I) and by the Financing Contractor for financial fitness/bond fitness (Part II) requirements.

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<sup>19</sup> Loan Loss Reserve Fund, Aug. 25, 2022, <https://www.cpuc.ca.gov/industries-and-topics/internet-and-phone/broadband-implementation-for-california/loan-loss-reserve-fund>.

In Part I of the application review, staff will review applicant eligibility criteria and the basis for the project's eligibility for a credit enhancement based-on project details described Section 9.2 Project Details.

If the applicant demonstrates project readiness and expertise to proceed further into the application process and staff deems the project qualified, staff will then submit Part II (9.3 Financing Details) of the application under review to its Financing Contractor.

If staff determines that the application does not meet the eligibility requirements provided in Part I, the application does not demonstrate the project's readiness to proceed, or the applicant does not respond in a timely matter to data requests, staff may offer the applicant an opportunity to withdraw the application to resubmit at a later time or staff may deny the application.

In Part II of the application review, the Financing Contractor will review the financial fitness/bond fitness to determine whether the project demonstrates financial solvency and if the guarantee "impact" justifies the use of funds. Specifically, the Financing Contractor will assess what the overall savings the credit guarantee will bring, or if the credit guarantee makes obtaining financing possible that would not otherwise be feasible without the guarantee.

Based on its review by staff and the Financing Contractor, staff will propose the project for award via Resolution or will deny the application.

#### 10.2.1. Loan Loss Agreement

Contemporaneously with or closely following issuance of a Resolution, the CPUC and its Financing Contractor will issue a loan loss agreement that the applicant must sign containing all terms and conditions of the loan product, which will also specify the share of losses covered by the Loan Loss Program. If the required parties do not sign a loan loss agreement, the CPUC will not execute the credit enhancement and will revoke the offer.

Staff is delegated authority to provide procedural guidance regarding application requirements and an application template(s), and to update such guidance and template(s) as needed, consistent with these guidelines.

In the case of a successful signed loan loss agreement, a designated portion of the Fund Balance will be allocated by the trustee from the escrow account to the appropriate reserve fund to guarantee against a specified amount of loan loss.

#### 10.2.2. Environmental Permitting

Following award of support, the Energy Division California Environmental Quality Act (CEQA) Section staff will obtain a contractor to review the CEQA documents for the project.

The applicant may file with the Energy Division's CEQA Section a completed CEQA review conducted by another agency acting as the Lead Agency pursuant to CEQA.

### 10.2.3. Loan or Bond Adjustment

Any differences in funding requested from the Loan Loss Program between when the applicant submitted their Loan Loss application and the award date shall be trued up to reflect the final terms of the debt instrument on the date of bond issuance.

In order to receive a trued-up award, applicants will provide the staff with an advice letter and follow the procedures as stated in Resolution T-17670<sup>20</sup> and General Order 96-B.<sup>21</sup> General Order 96-B includes General Rules applicable to telecommunications carriers, energy and water utilities and Telecommunications Industry Rules specific to telecommunications carriers.

The advice letter will include all pertinent information that allows staff to analyze the difference in offerings between when the applicant submitted their Loan Loss Program application and the award date.

### 10.2.4. Execution and Performance

Staff and the recipient shall determine a project start date after the recipient has obtained CPUC approval of their project resolution and approval from the CPUC and Financing Contractor on their loan loss agreement. Should the recipient or the recipient's contractor fail to commence work at the agreed upon date, or deviate from the recipient's Deployment Schedule as defined in Section 3 Definitions without notifying Communications Division staff, the CPUC reserves the right to terminate the award from the Loan Loss Program upon ten (10) days written notice to the recipient.

Broadband projects under the Loan Loss Program shall be completed within 24 months after their project start date.

In the event that the recipient fails to complete the project in accordance with the terms of approval granted by the CPUC, the recipient must reimburse some or all of the funds that it has received from the Loan Loss Program. The recipient must complete all performance under the award on or before the termination date of the award.

The CPUC or the Recipient may terminate a Loan Loss award, at any time at its sole discretion by delivering ten (10) days written notice to the award recipient. In the event that the applicant terminates the award, for any reason whatsoever, it will refund to the CPUC within 30 days of said termination, all funds made available under the Loan Loss Program by the CPUC to the applicant.

Loan Loss Program recipients shall comply with all applicable state and federal statutes, regulations, and executive orders.

### 10.3. Loan or Bond Default

The issuer, Communications Division staff, trustee, lender/bond owner and any partnering agency or entity servicing the loan or bond will work together to address any issues that occur throughout the life-term of the loan or bond. In the event of an "Event of Loss" as defined in Section 3 Definitions,

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<sup>20</sup> Resolution T-17670, Advice Letter, Annual Tariff, and Annual Report Filing Process Revision, Sep. 7, 2022, <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M319/K469/319469065.PDF>.

<sup>21</sup> General Order 96-B, Sep. 7, 2022, <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M023/K381/23381302.PDF#page=17>.

parties will follow the procedure described in section 12.2.3 – Incident Reporting, and any additional applicable procedures set out in the loan loss agreement apply.

If default occurs beyond the pledged amount in the Loan Loss Program to the borrower, the CPUC will pay the amount pledged to the applicant under the Loan Loss Program and the lender will absorb any losses in excess of the pledged amount. In addition, the CPUC may decide to take further action including (1) terminating any future funding of existing grants and/or loans or bonds and/or (2) deeming the applicant ineligible for future grant and loan or bond funding.

## 11. Outreach

Prior to and during the implementation of the Loan Loss Program, Communications Division staff will work with and leverage the expertise of other state agencies and partners to better coordinate outreach to eligible entities within the state. Additionally, staff will monitor and evaluate outreach efforts to ensure alignment with the CPUC's Environmental and Social Justice Action Plan.

### 11.1. Marketing and Outreach Plan

Incorporating participation of and engagement with the communities with critical needs to shape Loan Loss Program implementation and operations is important. This includes outreach to communities to be served. Applicants shall provide a plan that encourages subscription of the service in the project locations. Applicants shall also include evidence of support from communities affected by the proposed broadband projects, planned marketing and outreach efforts, including proposed stakeholder engagement, or any other relevant material in their application, as required by Section 9.2 Project Details, above.

## 12. Reporting

### 12.1. Public Reporting

Loan Loss Program support recipients will be required to file progress reports identifying project milestones and percent completions to date on a bi-annual basis per Public Utilities Code 281.2(d)(1). Progress reports are due on March 1 and September 1 of each year. In the event either date falls on a weekend or holiday, the reports are due the following business day.

Bi-annual public reporting will consist of the information listed below. This reporting will be submitted to the CPUC's Communications Division and will be made available to the public via the CPUC's Broadband Loan Loss Reserve webpage. Submission instructions and other relevant information, consistent with these guidelines, will be provided by the Communications Division and will be available on the Broadband Loan Loss Reserve webpage.

- Description of project accomplishments during the reporting period.
- Identification of project milestones and the percent complete to date. If the percent completed is different from the estimated target milestones shown in the Loan Loss application, it is necessary to provide a narrative description explaining what occurred.
- Major construction milestones (including a reporting on all CEQA mitigation implementation and monitoring activities, if CEQA review was required), date of completion of each task/milestone

as well as problems/issues encountered, and actions taken to resolve these issues/problems during construction (including CEQA compliance, if applicable).

- Description of any challenges or issues and any risks faced during the reporting period in achieving planned progress on the project, including environmental compliance and permitting challenges if applicable.
- Description of significant project milestones or accomplishments planned for the following reporting period.
- Final date of completion of the project, problems/issues encountered since last bi-annual report and actions taken to resolve these issues/problems during construction (and comprehensive reporting on CEQA mitigation compliance, if applicable).
- Certification that each progress report is true and correct, under penalty of perjury.

## 12.2. Project Reporting

Project reporting will consist of completion reporting, finance reporting, and if applicable, incident reporting. Completion reporting shall be reported upon completion of the applicant's broadband infrastructure project. Finance and incident reporting will be submitted to the CPUC's Communications Division annually for a duration equal to the number of years the funds from the Loan Loss Program are encumbered by the applicant. Project reporting will not be made public.

Project reporting will be required quarterly and will include:

- Description of the project, including any changes in the project construction and alignment, if applicable.
- Comparison of approved versus actual costs of construction.
- Description of status of progress as compared with Deployment Schedule proposed in application.
- Address- or location-level deployment and subscription information as specified by the CPUC.
- Speed test data at the address level for the project area (if applicable). Maps and associated data of all locations served (if applicable).
- Identification of the number of served locations by the project and in the project area, that have broadband availability at or above the minimum speeds noted in above Section 9.1 Project Service Standards.
- Documentation of advertisements issued, billing inserts and marketing information.
- Documentation of all service plans offered by the applicant, including speed tiers and prices.
- Open access interconnections (if applicable).
- Updates on project permitting.

### 12.2.1. Completion Reporting

The completion reports shall contain the following information, and shall be submitted within 30 days of the project completion date:

- Description of the project, including any changes in the project construction and alignment, if applicable.
- Comparison of approved versus actual costs of construction.

- Description of status of progress as compared with Deployment Schedule proposed in application.
- Subscribership information to date.
  - Projected subscribers versus actual subscribers (by subscriber type), as of the date of the completion report.
  - The actual number of current subscribers by subscriber type and subscriber speed.
  - The potential number of subscribers of each type that could be served using the Loan Loss Program project's existing facilities at the same minimum defined speed.
  - Both the number of low-income customers in the project area and the number of low-income customers subscribing to low-income plans.
- Speed test data at the address level for the project area, including:
  - Test results for download and upload speeds.
  - A representative sample of speed test results at dispersed locations in the project area, including locations at the edge of the project area; the number of tests will vary based on the project.
  - Maps and associated data of speed test locations and results in a .kmz/ .kml file, shapefile or .csv spreadsheet.
  - A screenshot of the results of CalSPEED speed tests, which can be accessed at <http://www.calspeed.org/index.html>.
- Maps and associated data of all locations served.
- The geographic coordinates of all locations that are served. This information will be provided in a plain-text, comma-separated values (.csv) file, or .kmz/ .kml file or shapefile that contains geo-located street address information, including latitude and longitude, as well as census block code (GEOID).
- Identification of the number of served locations in the project area that have broadband availability at or above the aforementioned minimum speeds.
- Documentation of advertisements issued, billing inserts and marketing information.
- Documentation of all service plans offered by the recipient, including speed tiers and prices.
- Open access interconnections (if applicable).
  - The number of interconnection requests and executed service agreements.
- Updates on project permitting (if applicable).

#### 12.2.2. Financial Reporting

Financial reporting will be required quarterly, and will require submission of the following:

- Bond proceeds expended
- Take rates
- System revenues achieved
- Progress toward bond repayment
- The anticipated release of the pledged LLR

#### 12.2.3. Incident Reporting

To minimize risk losses, the Loan Loss Program requires sufficient notice from local government agencies and non-profits in the event of an anticipated monetary default on payments to the lender. To that end,

as soon as a recipient knows they anticipate defaulting on debt secured by the Loan Loss Program or as soon as they anticipate drawing on any debt service reserve funds, either supported by the Loan Loss Program or otherwise, the recipient must notify the Director of the Communications Division in writing of the following facts:

- The anticipated release date of the pledged credit enhancement to cover default or anticipated date of beginning to draw down an associated debt service reserve fund.
- Incident type and details including preventative measures.
- Amount of default or anticipated draws from debt service reserve fund.

**(END OF ATTACHMENT 1)**